

Larry E. Craig, Chairman
Jade West, Staff Director

No. 1

February 4, 1997

S.J.Res. 1 – Balanced Budget Constitutional Amendment

Calendar No. 12

Ordered reported by the Committee on the Judiciary without amendment on January 30, 1997, by a vote of 13-to-5. All ten Republicans and three Democrats (Biden, Kohl, Torricelli) voted to report the resolution; five Democrats voted "no". Senate Rept. No. 105-3.

NOTEWORTHY

- The Senate this week will turn to S.J.Res. 1, a proposed amendment to the Constitution of the United States with respect to balancing the budget. A vote on final passage can be expected later this month. The House also is expected to vote this month.
- In a rare show of unanimity, *all* Republican Senators cosponsored S.J.Res. 1 which was introduced on January 21, 1997; they were joined by seven Democratic Senators (Bryan, Kohl, Graham, Baucus, Breaux, Moseley-Braun, Robb).
- Last Congress, the House passed a balanced budget constitutional amendment, but the Senate failed twice, once by just one vote. On that vote, six Democratic Senators who had voted *for* the balanced budget amendment in 1994 voted *against* it in 1995.
- The President has no formal role in the amendment process. Nevertheless, President Clinton has strongly opposed a balanced budget constitutional amendment.
- Amendments to a proposed constitutional amendment can be adopted by a simple majority vote; only on final passage is the constitutional two-thirds majority required.

BILL PROVISIONS

S. J. RES. 1, ANNOTATED

S.J.Res. 1 appears in the left column below. This is the version of the resolution that was introduced in the Senate on January 21, 1997, and ordered reported, without amendment, by the Committee on the Judiciary on January 30, 1997. In the right column are explanations of the resolution. The quotations in the right column are taken from the Judiciary Committee's report, S. Rept. 105-3.

"Article — "Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

A balanced budget is to be the "fiscal norm." Congress is expected to use "its full range of legislative powers" to reach and maintain the norm. Outlays may exceed receipts only if at least 60 Senators and at least 261 Representatives approve a "specific excess" by rollcall vote. (Those numbers will change if the size of the Senate or the House changes or if there are vacancies in either House.) "Nothing in this section either anticipates or requires any alteration in the balance of powers between the legislative and executive branches."

"Section 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

The waiver that is authorized by Section 2 and the waiver that is authorized by Section 1 can be combined into one piece of legislation which can be passed with a single vote of three-fifths of the whole number of each House. By requiring a super-majority to approve an increase in the debt limit, Section 2 is designed to help enforce the balanced budget standard. "[W]henever the Government exceeds the debt ceiling, it runs a theoretical risk of default, a powerful incentive for balancing the budget."

"Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

The President is required to propose a budget that is balanced, using "good faith . . . with respect to projected economic factors." This "section is not intended to grant the President formal authority or power over budget legislation or spending."

"Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

This section "improves congressional accountability for revenue measures." A bill to increase revenues will require the votes of at least 51 Senators and at least 218 Representatives. (Those numbers will change if the size of the Senate or the House changes or if there are vacancies in either House.)

"Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

The first sentence of Section 5 refers to a formal declaration of war. If Congress has declared war, the requirements of this article of amendment may be waived by a concurrent resolution, i.e., a resolution that does not require the consent of the President, adopted by simple majorities in each House. The second sentence of Section 5 permits a waiver when the country is engaged in "urgent national security crises." The joint resolution that is authorized here must be adopted by "a majority of the whole number of each House of Congress" (not a simple majority of a quorum) and then must become law.

"Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

This "provision precludes any interpretation of the amendment that would result in a shift in the balance of powers among the branches of government." This section recognizes the need for Congress to pass implementing legislation in an area as vast and complicated as the federal budget process, and further recognizes that Congress will have to use estimates. " 'Estimates' means good faith, responsible, and reasonable estimates made with honest intent to implement section 1, and not [to] evade it." In the implementing legislation, Congress could decide that a "temporary, self-correcting drop in receipts" or a "small" or "negligible" shortfall "would not represent a violation of section 1." Additionally, Congress "can require that any shortfall must be made up during the following fiscal year."

"Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal."

" '[T]otal receipts' is intended to include all moneys received by the Treasury of the United States, either directly or indirectly through Federal or quasi-Federal agencies created under the authority of acts of Congress, except those derived from borrowing. In present usage, 'receipts' is intended to be synonymous with the definition of 'budget receipts', which are not meant to include offsetting collections or refunds." "Contributions to social insurance programs . . . should be included in receipts." " '[T]otal outlays' is intended to include all disbursements from the Treasury of the United States, either directly or indirectly through Federal or quasi-Federal agencies created under the authority of acts of Congress, and either 'on-budget' or 'off-budget', except those for repayment of debt principal."

"Section 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later."

An article of amendment to the Constitution of the United States is ratified and becomes a part of the Constitution when the "three-quartereth" State (38th of 50) approves it. No additional act is necessary. U.S. Const., Article V; see also, *Dillon v. Gloss*, 256 U.S. 368, 376 (1921).

BACKGROUND

Votes in Congress

Congress has voted several times in recent years on proposed constitutional amendments to balance the budget. The text of the proposed amendment has evolved over the years.

104th Congress. On January 25, 1995, the (Republican-controlled) House passed a balanced budget constitutional amendment by vote of 300 ayes to 132 nays (H.J. Res. 1). The version the House passed in 1995 is identical to S.J. Res. 1 of the 105th Congress.

There were two votes in the Senate in the 104th Congress: On March 2, 1995, the Senate failed to adopt S.J. Res. 1/H.J. Res. 1. The vote was 65-to-35. (Fifty-one Republicans and 14 Democrats voted "aye". Two Republicans and 33 Democrats voted "nay". However, Majority Leader Dole, an avid supporter of a balanced budget amendment, voted "nay" only so that he could move to reconsider the vote.) In fact, there were 66 aye votes available in the

Senate on March 2, 1995, one shy of the necessary two-thirds. Six Democratic Senators who voted for the resolution in 1994 voted against it in 1995.

The proposal that failed in the Senate was slightly different from the version the House approved because the Senate had added on the floor an amendment on judicial review, which read: "The judicial power of the United States shall not extend to any case or controversy arising under this article except as may be specifically authorized by legislation adopted pursuant to this section."

Then, on **June 6, 1996**, the Senate failed again to obtain a two-thirds majority. The vote was 64 yeas (52 Republicans and 12 Democrats) to 35 nays (one Republican and 34 Democrats).

103rd Congress. On **March 1, 1994**, the Senate failed by four votes to adopt a balanced budget constitutional amendment (S.J. Res. 41). Forty-one Republicans and 22 Democrats voted for the proposal; 3 Republicans and 34 Democrats voted against it. On **March 17, 1994**, the House again failed to obtain the two-thirds majority necessary for passage (H.J. Res. 103).

102nd Congress. On **June 9, 1992**, the House again narrowly failed to reach the necessary two-thirds majority. The Senate failed to obtain cloture on a balanced budget amendment on **June 30, 1992**, and again on **July 1, 1992**. In each case, the vote was 56 (41 Republicans and 15 Democrats) to 39 (no Republicans and 39 Democrats).

101st Congress. On **July 17, 1990**, the House voted on a balanced budget constitutional amendment, but the House fell a few votes short of the necessary two-thirds (H.J. Res. 268).

99th Congress. On **March 25, 1986**, the Senate failed by one vote to adopt a balanced budget constitutional amendment (S.J. Res. 225). Forty-three Republicans and 23 Democrats voted for the proposal; 10 Republicans and 24 Democrats voted against it.

97th Congress. The Senate adopted a balanced budget constitutional amendment on **August 4, 1982**, by vote of 69-to-31 (S.J. Res. 58). Forty-seven Republicans and 22 Democrats voted for the amendment; seven Republicans and 24 Democrats voted against it. The Senate proposal was not voted on in the House of Representatives, but the House did vote on H.J. Res. 350 on **October 1, 1982**, failing to obtain the necessary two-thirds majority.

Party Platforms

The positions of the platforms of the National Republican Convention and the National Democratic Convention are set out below:

1980

Republican: "If necessary, the Republican Party will seek to adopt a Constitutional amendment to limit federal spending and balance the budget, except in time of national emergency as determined by a two-thirds vote of Congress." [1980 *CQ Almanac*, page 75-B, col. 1.]

Democratic: "We oppose a Constitutional amendment requiring a balanced budget." [1980 *CQ Almanac*, page 92-B, col. 3.]

1984

Republican: "We will work for the constitutional amendment requiring a balanced federal budget passed by the Republican Senate but blocked by the Democrat-controlled House and denounced by the Democrat Platform." [1984 *CQ Almanac*, page 43-B, col. 1.]

Democratic: "We oppose the artificial and rigid Constitutional restraint of a balanced budget amendment." [1984 *CQ Almanac*, page 78-B, col. 1.]

1988

Republican: "We call for a balanced budget amendment to the Constitution." [1988 *CQ Almanac*, page 50-A, col. 2.]

Democratic: no reference found

1992

Republican: "Republicans vigorously support a balanced budget, a balanced-budget constitutional amendment and a line-item veto for the president." [1992 *CQ Almanac*, page 90-A, col. 2. (See also, page 86-A, col. 1.)]

Democratic: no reference found

1996

Republican: "Republicans support a Balanced Budget Amendment to the Constitution, phased in over a short period and with appropriate safeguards for national emergencies. We passed it in the House of Representatives, but Bill Clinton and his allies — especially the Senate's somersault six, who switched their longstanding position on the issue — blocked it by a single vote." [*Congressional Q. Weekly Rept.*, Aug. 17, 1996, page 2319.]

Democratic: no reference found

Public Opinion Polls

Strong Support. For decades, public opinion polls have shown strong support for a balanced budget constitutional amendment. For example, in a Gallup poll published in the May 22, 1996, *USA Today*, 83 percent of Americans favored a balanced budget amendment and just 14 percent opposed it.

Weak Support. An interesting and important perspective on public opinion polls was provided by the American Association of Retired Persons in its testimony to the Judiciary Committee on Jan. 22, 1997. An excerpt from that testimony is reprinted below:

"We often hear the argument by proponents of the balanced budget amendment [that] the American people support a balanced budget amendment. But, to a considerable extent, public support for a balanced budget amendment reflects a misunderstanding of federal spending. A Louis Harris poll shows the American people think 20 percent of federal dollars are spent on foreign aid and 30 percent on defense, making it appear 'easier' to balance the budget without 'hurting' individuals. Also, many Americans believe that cutting congressional salaries and perks and eliminating waste, fraud and abuse would achieve significant deficit reduction. Not surprisingly, 56 percent of those polled in January 1995 by the Wirthlin Group believe that cutting foreign aid and congressional salaries by 25 percent would go a considerable way towards balancing the federal budget. Comparable findings have been reported in other surveys. Misconceptions about federal spending lead many to believe that balancing the budget can be achieved without reducing spending on popular programs, like Social Security, Medicare, and education. In fact, support for a balanced budget amendment drops dramatically when people are asked to juxtapose the amendment with cuts in highly regarded federal programs. For example, 79 percent of Republicans, 85 percent of Democrats, and 90 percent of Independents polled by Wirthlin in 1995 favored exempting Social Security from a balanced budget amendment. Opposition to including Social Security in a balanced budget amendment is consistent and strong. A 1995 poll for ABC News found that 67 percent of Americans believe it is more important to protect the Social Security system than to pass a balanced budget amendment that includes Social Security.

"Similarly, support for a balanced budget amendment declines considerably when respondents are asked about reductions in Medicare. A January 1996 NBC News/*Wall Street Journal* poll showed that while 14 percent of the respondents would favor balancing the budget over 7 years even if it meant cutting Medicare, 41 percent preferred balancing the budget over 8 or 9 years without any reductions in Medicare, and another 40 percent wanted a balanced budget without any or only small program reductions. An August 1996 poll by Princeton Survey Research Associates confirms that 77 percent of those interviewed oppose[d] 'making major reductions in future spending on Medicare to balance the federal budget.' These findings are generally consistent with the views of our members and are found across polling data.

"Since support for a balanced budget amendment drops dramatically if it entails reduced spending for Social Security, Medicare and other popular programs, supporters should first explain the budgetary trade-offs. They should then demonstrate to the American people how the amendment can be implemented before adopting this amendment, not after. The elements of a balanced budget are critical to the public, and the proposed amendment does not provide insight into these details."

ADMINISTRATION POSITION

No formal Statement of Administration Policy was available at press time. However, President Clinton is opposed to a balanced budget constitutional amendment. In a letter to Senator Daschle dated January 28, 1997, the President said:

"... I am profoundly committed to balancing the budget. With your help and that of the bipartisan leadership, I believe that a historic budget agreement that achieves balance by 2002 is within reach this year. This commitment notwithstanding, I am convinced that we should not have a balanced budget amendment. ...

"I am very concerned that Senate Joint Resolution 1 ... could pose grave risks to the Social Security system. In the event of an impasse in which the budget requirements can neither be waived nor met, disbursement of Social Security checks could cease or unelected judges could reduce benefits to comply with this constitutional mandate. No subsequent implementing legislation could protect Social Security with certainty because a constitutional amendment overrides statutory law. ..."

OTHER VIEWS

Additional Views of Mr. Grassley

"I am submitting additional views to the Committee Report on S.J. Res. 1 because I want to highlight the significant flaws of the amendments offered in Committee to abandon the unified budget by taking social security 'off budget.' In my view, these amendments would harm the social security program and force unconscionably deep cuts in many of America's most vital social programs. * * * *

"In the spirit of 'truth in budgeting,' I challenge the supporters of scrapping the unified budget to identify what programs will be cut and how large those cuts will be. Prior to the 104th

Congress, those who supported a balanced budget were repeatedly asked to provide details of how a balanced budget would be achieved. I believe the same standard should apply to those who propose exempting social security.

“When it comes to facing up to the difficult issue of suggesting such deep cuts, it may be some of those who support abandoning the unified budget will also abandon a balanced budget.

“Importantly, scrapping the unified budget will harm the social security program. While the social security program is currently generating surpluses, that situation will not continue. By 2018, the Social Security trust fund will be in deficit-spending mode. By 2029, the trust fund will be insolvent. In that year, the deficit attributable to Social Security will be \$647 billion.

“In the spirit of ‘truth in budgeting,’ I believe that the proponents of abandoning the unified budget should explain to the American people how they would save social security once the protective shield of the unified budget has been removed. * * * *”

Additional Views of Mr. Kyl

“* * * A balanced budget is critically important. But it is also important *how* balance is achieved and *at what level* of taxing and spending. Congress could conceivably double Federal spending to \$3 trillion and try to raise taxes to match in order to achieve a balanced budget. But that is not what American families, whose budgets are already stretched to the limit because of high taxes, expect out of a balanced-budget amendment. Such an oppressive tax burden would certainly push the economy into severe recession which, in turn, would eliminate the revenues necessary to fund the Government and maintain a balanced budget.

“The Balanced-Budget Amendment should not become anyone’s excuse for raising taxes. But neither should a spending or tax limit become anyone’s excuse for opposing a constitutional requirement for a balanced budget. The mountain of debt our Government is passing on to future generations is growing too large to miss yet another opportunity to send a balanced-budget amendment — with or without a tax or spending limit — to the States for ratification. I will support S.J.Res. 1, but I also intend to press for the prompt consideration of a tax or spending limit as the essential next step after the Senate has completed action on the Balanced-Budget Amendment. * * * *”

Additional Views of Mr. Abraham

“No issue is more important to the health of this Nation and the security of future generations than passing a Constitutional amendment requiring balanced Federal budgets. The Federal budget has been in deficit for 28 straight years, while total Federal borrowing is now over \$5 trillion. A child born today faces almost \$200,000 in additional taxes just to service the interest on this debt. Nevertheless, the Balanced-Budget Amendment remains extremely

contentious in the Senate, as evidenced by a number of amendments offered in the Judiciary Committee which would either undermine the enforcement provisions of the amendment or make it impossible for future Congresses to comply with its provisions. . . .

“Of the six amendments offered during markup, three contained provisions designed to exempt the Social Security System from calculations of Federal revenues and outlays. And while these amendments differed slightly in detail, they had in common two devastating flaws. First, they each would mandate massive spending cuts to education, health care, and the environment and/or major tax increases on hard-working American families. Second, none of these amendments does anything to protect future Social Security benefits or help ensure that Federal debt obligations to Social Security will be repaid. In fact, by mandating draconian spending cuts and tax increases, these amendments may actually harm future generations of seniors and damage the Social Security System they supposedly protect.

“First, consider the massive spending cuts and tax increases made necessary by these various amendments. In 2002 alone, Congress would have to first balance the unified budget, and then save an additional \$104 billion to balance the budget exempting Social Security. Over the years 2002 to 2007, these amendments would require that Congress either cut spending, raise taxes, or both, by an additional \$706 billion. * * * *

“Second, none of these amendments does anything to protect Social Security benefits from future Congresses or ensure that the treasury bonds held by Social Security will be repurchased. Under Federal law, assets of the Social Security trust funds are required to be invested in special bonds issued by the Treasury Department. Neither the Kennedy, the Feinstein, nor the Torricelli amendments change this law or make Social Security payments a priority over other Federal accounts. * * * *

Minority Views of Messrs. Leahy, Kennedy, and Feingold

Senators Leahy, Kennedy, and Feingold have filed extensive Minority Views that run for more than 40 pages in the Report and that cover the major issues of controversy. They conclude, “Our constitutional protections of separation of powers and majority rule should not be sacrificed to enact this unnecessary and unworkable proposed constitutional amendment on budgeting.”

Additional Views of Mr. Torricelli

Mr. Torricelli has “no inherent opposition” to amending the Constitution to require a balanced budget, but he believes that the amendment that was reported (and which he voted to report) can be “improved upon” because it contains “several flaws.” He believes an amendment should (1) allow for a separate capital budget, (2) exempt Social Security, (3) eliminate the supermajority requirement for raising the debt ceiling, and (4) provide flexibility to deal with military and economic emergencies.

COST

The Congressional Budget Office's "Cost Estimate on S.J.Res. 1" (dated Jan. 30, 1997) reads in pertinent part as follows:

"... The budgetary impact of this amendment is very uncertain, because it depends on when it takes effect and the extent to which the Congress would exercise the discretion provided by the amendment to approve budget deficits. . . .

"CBO projects that the deficit will be \$188 billion in fiscal year 2002 if there are no changes in current policies (and assuming that discretionary spending grows at the rate of inflation after 1998). CBO estimates, however, that policy savings totaling \$154 billion in 2002 (including associated debt service effects) would balance the budget in that year. The additional \$34 billion in deficit reduction — the so-called fiscal dividend — would come from favorable changes in the economy induced by balancing the budget.

"This resolution would not directly affect spending or receipts, so there would be no pay-as-you-go scoring. . . .

"S.J.Res. 1 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) and would not directly affect the budgets of State, local, or tribal governments. However, steps to reduce the deficit to meet the requirements of this amendment could include cuts in Federal grants to these governments, a smaller Federal contribution for shared programs or projects, and/or increased demands on State, local, and tribal governments to compensate for reductions in Federal programs. . . ."

POSSIBLE AMENDMENTS

No list of amendments is currently available. However, the following amendments were offered (and defeated) during markup in the Judiciary Committee. These same issues are sure to arise on the Senate floor.

- A Feinstein substitute amendment that would have (1) exempted Social Security funds from budget calculation beginning "no earlier than" fiscal year 2003, (2) exempted capital expenditures, (3) allowed the debt ceiling to be raised by the vote of a constitutional majority, and (4) suspended the balanced budget requirements during a "serious national economic emergency" when declared by a joint resolution adopted by constitutional majorities
— rejected on a vote of 8-to-9.

- A Torricelli substitute amendment that would have (1) exempted Social Security, (2) exempted capital expenditures, and (3) suspended the balanced budget requirements during an “economic recession, depression, or significant economic hardship” when declared by a concurrent resolution adopted by constitutional majorities
— rejected on a vote of 8-to-9.
- A Leahy amendment that would have struck the requirement for a three-fifths vote to raise the debt limit and substituted a simple majority
— rejected on a vote of 8-to-9.
- A Kennedy amendment that would have to remove Social Security receipts and outlays from the scope of the amendment
— rejected on a vote of 9-to-9 (one Republican and eight Democrats voted “aye”; nine Republicans voted “nay”).
- A Durbin amendment that would have required a constitutional majority of both Houses to increase or create new “tax exemptions, deductions, credits, or other special tax treatment available to a specific class of individuals or corporations”
— rejected on a vote of 8-to-9.
- A Feingold amendment that would have reduced the time period for ratification from seven years to three
— rejected on a vote of 6-to-9.

Note: Senator Kennedy circulated an amendment on judicial review/presidential power, but the amendment was not offered during the markup.

Staff contact: Lincoln Oliphant, 224-2946